IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

IN RE:	§	CASE NO. 22-90341-11
	§	JOINTLY ADMINISTERED
	§	HOUSTON, TEXAS
CORE SCIENTIFIC, INC, ET AL,	§	WEDNESDAY,
	§	FEBRUARY 1, 2023
DEBTORS.	§	11:30 A.M. TO 1:03 P.M.

MOTION HEARING (VIA ZOOM)

BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

(Recorded via CourtSpeak)

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APPEARANCES:

For the Debtor:	WEIL GOTSHAL & MANGES, LLP Ray C. Schrock, PC Ronit Berkovich, Esq. Alex Cohen, Esq. Jeremy Cain, Esq. 700 Louisiana, Ste. 1700 Houston, TX 77002
For the Ad Hoc Group:	PAUL HASTINGS, LLP Kris Hansen, Esq.
For the Creditors Committee:	WILLKIE FARR & GALLAGHER, LLP Brett Miller, Esq. Jennifer Hardy, Esq.
For NYDIG ABL, LLC:	Sidley Austin Dennis Twomey, Esq.
For Ad Hoc Group of Equity Holders:	SKADDEN ARPS Ron Meisler, Esq. Noelle Reed, Esq.
For B. Riley:	CHOATE HALL & STEWART John Ventola, Esq.
Also present:	BARINGS Brian Lohan, Esq.

(Please also see Electronic Appearances.)

HOUSTON, TEXAS; WEDNESDAY, FEBRUARY 1, 2023; 11:30 A.M.

THE COURT: This is Judge Jones. The time is 11:30. Today is February the 1st, 2023. This is the docket for Houston, Texas.

On the 11:30 docket, we have the jointly administered cases under Case Number 22-90341, Core Scientific, Inc.

As always, if you'd make sure you record your electronic appearance, it's a quick trip to the website. You can do that at any time prior to the conclusion of the hearing.

The first time that you step up to the lectern, be it the real one or the virtual one, if you'd please state your name and who you represent, that really serves as a good point of reference in the event that a transcript request is made.

And as always, we are recording using CourtSpeak. We'll have the audio up on the docket shortly after the conclusion of the hearing.

We do have a number of folks who are on the line. I'm going to activate the hand-raising feature, just so folks aren't interrupted. If you know you're going to speaking, if you'd go ahead and give me a five-star on your telephone.

AUTOMATED: Conference muted.

(Pause in proceedings)

THE COURT: All right. Terrific. Who is taking the

lead this morning? Ah, Mr. Schrock.

MR. SCHROCK: Good morning, Your Honor.

THE COURT: Good morning.

MR. SCHROCK: Ray Schrock, Weil Gotshal & Manges, proposed counsel for the debtors.

THE COURT: All right. Thank you.

MR. SCHROCK: Your Honor, my partner Ronit Berkovich and my colleague Alex Cohen are going to be taking you through where we are precisely on our new proposed DIP. But I thought it was worth just a general update to the Court and parties about where we are in the cases and give you a little bit of context for, you know, where we are in these cases.

THE COURT: Love to hear it.

MR. SCHROCK: Okay. So, obviously, since we filed, we've seen a pretty dramatic change in the price of bitcoin. Bitcoin was, you know, depending on the time, you were talking around the petition date right around 16,500, sixteen-eight. You know, as of this morning -- somebody will correct me -- but I believe it's -- you know, it's been hovering around 23,000, which, you know, depending on your math, you know, 35 to, you know, 40 percent increase in the price from the petition date.

I think that it's been quite evident that, you know, this has had, you know, a dramatic impact on the debtors' prospects. You know, essentially, the company is, you know,

in many respects, a levered bitcoin option, so our cash flow is substantially better than when, you know, we had forecasted it under the initial DIP budget.

And we did have a very robust post-petition DIP marketing process, consistent with our fiduciary obligations. And so we have the unusual circumstance of presenting to Your Honor today a replacement debtor-in-possession financing facility.

A few notes about that:

One, it was a good faith process; it was run open, fairly, and you know, we're presenting evidence to that effect.

And it's with our partner B. Riley.

Just a couple of notes on the company's relationship with B. Riley:

So B. Riley was running an at-the-market, you know, type of equity raise, you know, pre-petition.

We also had a loan that was outstanding to them.

We had significant negotiations with B. Riley leading up to the petition date about an out-of-court transaction as we, you know, highlighted in some of our -- in some of our pleadings.

THE COURT: Right.

MR. SCHROCK: Ultimately, we didn't get there. And I wouldn't always say that -- listen, it was contentious, you

know, between the parties, but good spirit -- good faith, but spirited, I would say is the right way to characterize it pre-petition.

You know, Mr. Riley's firm then went on to the creditors' committee, they're the chair of the creditors' committee.

They were not -- they didn't, you know, get serious -- they were not the alternative DIP financing provider. I think the convertible noteholders' pleading that they filed this morning referenced they were the alternative. They -- that's not correct.

THE COURT: Right.

MR. SCHROCK: They were not the alternative DIP financing provider.

But given that B. Riley was on the creditors' committee, I think the committee has done a good job. They made sure that B. Riley was recused --

THE COURT: Well, yeah.

MR. SCHROCK: -- you know, kind of walled off from any DIP financing discussions.

And Willkie Farr, who was counsel to B. Riley pre-petition -- they're the creditors' committee counsel now -- they -- Riley brought in Choate as their DIP financing counsel.

THE COURT: Right.

MR. SCHROCK: And assuming Your Honor approves the financing, you know, my understanding is they'd be stepping off the creditors' committee --

THE COURT: Right.

MR. SCHROCK: -- at that point.

So I note all of that just to make sure that -- you know, I don't ever want you to think that we're not being anything other than open and transparent. There was a relationship here --

THE COURT: Right.

MR. SCHROCK: -- but we have been completely down the middle and aboveboard about the process and how we're running this to date.

THE COURT: So, number one, I'll -- you know I appreciate transparency. The pleadings have told the story from day one. And for those folks who haven't read all of the pleadings, I think what you've done this morning is perfect. I think anyone who has an interest in the case could not participate and not know that there's a relationship there, so I very much appreciate your telling me.

So let me ask because, at least as I read the pleadings, the replacement DIP issue is really just down to the termination fee, right, or are there other issues?

MR. SCHROCK: I think there's a couple of issues, Judge, that may be open. I think, between the debtors and B.

Riley and the convertible noteholders, I think we've resolved all of the issues.

I think the unsecured creditors' committee and the ad hoc equity committee have raised concerns around the termination fee that Your Honor would have to hear this morning.

THE COURT: Right.

MR. SCHROCK: Also, just a note that, you know, in conjunction with this, prior to closing the financing, we would be terminating the pre-petition RSA with the convertible noteholders.

That's simply because, listen, we're -- the company is not under any mis-impression that we're not going to be working with -- we're going to be working with the convertible noteholders. We are still firmly of the view and the special committee is firmly of the view we need a substantial de-leveraging as part of, you know, any kind of exit from Chapter 11.

That being said, when you have this kind of change in value from the petition date and just given the splits that we saw under that existing RSA --

THE COURT: Uh-huh.

MR. SCHROCK: -- you know, our judgment was it's appropriate to sit down and reset.

And so I want to make clear that the company still

will and intends to have a good working relationship with the convertible noteholders throughout these cases. We want to get to a consensual transaction and ensure the company's emergence from Chapter 11, it's in the best interests of all stakeholders. And likewise, we recognize there's been a change in circumstances since we initially filed these cases.

So I just wanted to give that context and that assurance to the stakeholders that we're here and we're still calling balls and strikes.

THE COURT: No, I got it. This is just the modern digital Asarco case, right? I mean, we were -- you know, we were in the money and out of the money based on the price of copper, and this is just a -- this is just a different commodity --

MR. SCHROCK: It's a different commodity.

THE COURT: -- they we've got.

MR. SCHROCK: I agree with that analogy, Your Honor.

THE COURT: Let me ask you: With -- and again, not prejudicing anyone's right to get up and make whatever argument. So, as I -- have you don't worst-case/best-case analysis of what the DIP looks like with different outcomes on the termination fee?

MR. SCHROCK: Your Honor, I'm going to have to defer to Ms. Berkovich on that particular question.

THE COURT: Sure.

MR. SCHROCK: But I think that, you know, our position on the termination fee is essentially, listen, we had a deal --

THE COURT: Right.

MR. SCHROCK: -- with the converts. The converts, it's part of an initial order.

THE COURT: Right.

MR. SCHROCK: We approved -- the Court approved it. And in our view, a deal is a deal, and you know, we're here, we're standing behind that.

THE COURT: Right. So let me -- so I can tell everyone this, and maybe it causes a change in how people are acting today, how -- you know, how they're -- what they're thinking about and how they're thinking about -- is no question in my mind that I approve the termination fee. That was priced in and it was -- you know, and I complained it about the cost or -- I did it nicely, but I complained about the cost, but I also recognized the circumstances.

What I -- excuse me. What I haven't thought all of the way through -- and this -- you know, I've spent the past three days up in your neck of the woods --

MR. SCHROCK: Yes.

THE COURT: -- you know 18 hours --

MR. SCHROCK: Yeah.

THE COURT: -- a day, I just hadn't had time to work

my way through this -- is, you know, if there are changed circumstances, what discretion do I have to move the termination fee. The answer may be none. It may be that I have discretion. And then it becomes a question of do I do anything or not, again, because I do operate from the premise that I assume that people rely on orders that I enter.

MR. SCHROCK: Yes.

THE COURT: And if it becomes a habit that I don't really mean what I say, then the process doesn't work, and I got all of that.

That being said is -- I thought it made some sense to tell everyone that I do believe that there's a termination fee that's part of the financing that I approved. Is it --

MR. SCHROCK: Yeah, we agree.

THE COURT: Is it somewhere between, you know, zero and, you know, the max fee that was under the financing? You know, I have my own feeling about that, but I'm certainly willing to -- I'm certainly willing to hear that argument, if folks wanted to -- you know, if folks wanted to do that.

I'm also a firm believer -- you know, when I stood where you're standing, I liked to control my own destiny. I didn't like the guy who knew the least about the case, but who would make the decision, making -- you know, making the result, unless I just couldn't get there.

And so I -- because I was thinking through it.

Again, my thought was I would tell everyone that I do believe there's a termination fee involved in this.

MR. SCHROCK: Uh-huh.

THE COURT: You know, whether it's something less than the 15 percent, you know, I hadn't thought through. And I'm not going to take away anybody's right to make those arguments.

And what I was really trying to sort out is: Is that something that folks want to say, you know, I didn't think the Judge was going to do that, we want to talk about, think about having different arguments --

MR. SCHROCK: Uh-huh.

THE COURT: -- on a different day, or do we all want to make the argument today and, you know, we'll just see where it goes?

I will go either way. I'm just trying to be fair to everybody because --

MR. SCHROCK: Sure.

THE COURT: -- you -- not everyone knows exactly how I'm thinking about it. And I'm talking to you, but obviously, I'm talking to everyone.

MR. SCHROCK: I understand.

THE COURT: So I'm more than happy to do -- I'm more than happy to do that. I'm more than happy -- I mean, I think the first issue -- or the first item that's on today's docket

is just easy and noncontroversial.

MR. SCHROCK: Uh-huh.

THE COURT: I didn't know if it made sense just to get that out of the way, so, if there are pending deals, those can -- you know, people can know that those are going to get inked and get consummated, and we can move on past that because, you know, it wasn't sort of move-the-case kind of money. I know it's real and I know it's --

MR. SCHROCK: Uh-huh.

THE COURT: -- a lot of money, but it's not really move-the-case money.

MR. SCHROCK: Yeah, I think --

THE COURT: So --

MR. SCHROCK: -- we had always -- all of our forecasts are assuming that it is payable. I think our new -- that our proposed DIP lender is prepared to --

THE COURT: Right.

MR. SCHROCK: -- you know, to make sure that it's paid.

I think that your question -- and the parties will get up -- I -- one, I think we should decide it today.

THE COURT: Okay.

MR. SCHROCK: I will say that, and I think we should deal with it.

I do think that the Court always has discretion what

to put in an order. Here, in this order, you know, you said that, listen -- anything -- all the obligations and any feels -- fees that are paid or payable --

THE COURT: Uh-huh.

MR. SCHROCK: -- are approved.

And then I think parties may look to -- you know, I imagine some parties will say, well, listen, under 364 of the Code, once you make -- you know, if we're making loans on that basis and reliance on that, that that's -- you know, we would ask the Court to uphold that.

THE COURT: Yeah. No, I --

MR. SCHROCK: I imagine that will be some of the argument. And others may say, listen, we think you have discretion. But I think that's where it's going to come down to is probably the statutory --

THE COURT: I agree.

MR. SCHROCK: -- reliance.

THE COURT: And I'm telling everyone. I mean, I -- again, when I enter an order, I expect people to abide by it until it's reversed. I want people to rely on the orders that I enter.

I also recognize -- and let me pick something that won't apply, but it's an example of what exists in the Code. I mean, you've got a standard under 328 that I can --

MR. SCHROCK: Uh-huh.

THE COURT: -- approve a fee --

MR. SCHROCK: Yes.

THE COURT: -- and not that this is a fee, but I can approve a fee in advance. And then, if there are things that I conclude that I couldn't reasonably have anticipated at the time, then I can change it.

MR. SCHROCK: Uh-huh.

THE COURT: That's written into the statute.

And so, again, I'm not trying to take away anyone's right to make any argument that they want to make, again, I'm telling everyone I do believe that there's a termination fee that's --

MR. SCHROCK: Uh-huh.

THE COURT: -- factored into the cost of the DIP. You know, Hansen is a good lawyer. He's going to listen to me. And I don't know if he wants to, you know, step out and, you know, see if there's a small give to give certainty, or if he wants to roll the dice and see what I'll do.

(Laughter)

THE COURT: I mean, you know, that's his choice. I'm just --

MR. SCHROCK: That's --

THE COURT: I'm trying --

MR. SCHROCK: -- his choice.

THE COURT: -- to give him information, to the

extent that I can.

MR. SCHROCK: Yes.

THE COURT: But happy to do that. But as I understand it, that's really the only issue, right?

MR. SCHROCK: The only other --

THE COURT: Yeah.

MR. SCHROCK: Sorry to interrupt, Judge. Just the only other issue I believe that's out there is that, shortly before we came to court, there was still an outstanding issue on the 506(c) waiver and the 552(b) waiver to the convertible noteholders.

THE COURT: Oh --

MR. SCHROCK: We have language that -- basically, what we, the debtors, have agreed to do as part of this order is that, so long as there's a consensual use of cash collateral up through the termination date of cash collateral, that we would give a 506(c) waiver during that time, the logic of it being, you know, that, if we were going to have a surcharge, it would be -- you know, someone could say, well, listen, it -- that's under an approved budget, it would be roughly equal to, you know, that use of cash collateral at that time, and so that would be a fair exchange of -- for the consensual use of cash collateral.

I think the other side of it is just, you know, how does that interact with any 507(b) claim that could be later

asserted. And you know, we see those as separate issues. We actually had the pleasure of litigating this in Sears up through the Second Circuit, and so we have some intimate familiarity with it. I hope we never get there because that would be a bad outcome for the case if we're arguing over 507(b) claims, but we did resolve it.

And I think the committee and the share -- ad hoc shareholders group still have an issue around that particular issue, is my understanding. But they can tell you if there's anything else outstanding. We've been trying to --

THE COURT: And again --

MR. SCHROCK: -- play in the middle.

THE COURT: -- I'll tell everyone, you know, my view of that is, is that --

MR. SCHROCK: Sure.

THE COURT: -- those are debtor rights. And I know that sometimes debtors don't really have a choice, and that's when I pay a lot more attention to it.

MR. SCHROCK: Okay.

THE COURT: But when debtors are freely exercising their business judgment -- because they have the big view of the case. The -- you know, we're -- they're not -- you're not just fighting issues, you've got to play the long game and you've got to figure out how to get to an end result as efficiently and as quickly and with minimum risk as you can.

And you know, if that's the evidence that I'm going to hear, I'm just going to tell everyone, again -- I had someone make the argument to me that this is not a debtor right, it's a creditor right, and it was a long hearing and they lost me from the very beginning.

(Laughter)

THE COURT: You know, it's one thing to say that it's a debtor right, but the debtors can't exercise it because of -- pick your issue. That I get --

MR. SCHROCK: Uh-huh.

THE COURT: -- and I know that that exists because I've been exactly where you are. And I've been told that, if you want this, you don't have any discretion and I know that goes on.

But when I've got a debtor in a position where they go, look, we've made -- we thought through this, we've been down all the branches of the decision tree, and this is how we think our right ought to be used or not used, I'm going to pay an awful lot of attention to that. So, again, you know --

MR. SCHROCK: Yes.

THE COURT: -- I'm sort of talking to everybody on that.

MR. SCHROCK: Fair enough. Thanks very much, Your Honor.

So, you know, with that, I'd propose to turn the

podium over to my partner Ms. Berkovich and give you some more of the specifics --

THE COURT: Absolutely. I want to give everyone else a chance --

MR. SCHROCK: Sure.

THE COURT: -- to make --

MR. SCHROCK: Sorry.

THE COURT: -- opening comments. And part of those comments could be, you know, we'd like five minutes to think about what you've said, and I'm certainly -- I would certainly entertain that. If that's, you know, we knew you were going to say that in one form or another, we're ready to proceed, then, you know, terrific --

MR. SCHROCK: Okay.

THE COURT: -- because, you know, my Mucinex is only going to last so long.

(Laughter)

THE COURT: It's -- you know, you gave me a cold during my mediation.

(Laughter)

THE COURT: But all --

MR. SCHROCK: Sorry.

THE COURT: All just fine.

MR. SCHROCK: Okay. Very good.

THE COURT: Thank you, Mr. Schrock.

Let me ask: Anyone else want to make opening comments?

(No verbal response)

THE COURT: Okay. Oh, you know what I didn't do?

(Participants confer)

THE COURT: Anyone on GoToMeeting wish to make comments?

Yes, Ms. Hardy, come on up.

No one has actually turned on their video camera, so I'm going to assume that everyone is just watching.

MS. HARDY: Thank you, Your Honor. Jennifer Hardy of Willkie, Farr & Gallagher as proposed counsel to the unsecured creditors' committee.

I just wanted to introduce some of my colleagues in the courtroom because is the first time we've appeared as counsel --

THE COURT: Ah, okay.

MS. HARDY: -- to the creditors' committee.

We have Brett Miller, who I believe you know from previous matters.

THE COURT: Good morning.

MS. HARDY: Jim Dugan, Todd Goren, as well.

And as Mr. Schrock mentioned and as the Court knows, B. Riley was a former client of Willkie Farr, so that's why we have Mr. Brookner of Gray Reed as conflicts and efficiency

counsel in the courtroom, as well, so ...

THE COURT: Always good to see him.

MS. HARDY: Thank you, Your Honor.

THE COURT: All right. Thank you.

All right. If there are no other comments -- yes, ma'am, did you want to come up?

MS. REED: Yes, Your Honor, very briefly. Noelle Reed for the Ad Hoc Group of Equity Holders.

THE COURT: Yes, ma'am.

MS. REED: Just wanted to introduce ourselves. We anticipate we'll be filing a motion for appointment of an official committee --

THE COURT: Okay.

MS. REED: -- within maybe the next 24 hours. With me is my partner Ron Meisler and one of our associates Ms. Phelps, and Mr. Panagakis may or may not be on the line.

THE COURT: Go it. Hadn't seen him yet, but obviously I know him and I welcome his participation.

What I would ask that you do, if you decide that you're going to -- that you're going to seek official recognition, talk to everybody because I assume that's not a thirty-minute hearing.

(Laughter)

THE COURT: Talk to everybody and then reach out to Mr. Alonzo and get a setting that, as much as it can, works

for everybody. I assume that that will probably be an in-person hearing, but just have that conversation with everybody.

MS. REED: Certainly, we will.

THE COURT: All right.

MS. REED: And just for your record, we did file an objection to the original.

THE COURT: I saw it.

MS. REED: And of course --

THE COURT: Yeah.

MS. REED: -- that's mooted by the newly filed.

THE COURT: Thank you.

All right. No other takers.

Good morning.

MS. BERKOVICH: Good morning, Your Honor. For the record, Ronit Berkovich from Weil Gotshal, proposed counsel to the debtors.

THE COURT: We need to find a way to lower that screen, don't we? Huh.

MS. BERKOVICH: Lower the --

THE COURT: I was just -- because it kind of blocks your face.

(Participants confer)

MS. BERKOVICH: I know.

THE COURT: No, no, no. I -- that's my fault and I

will --

(Participants confer)

(Laughter)

MS. BERKOVICH: I do have another option. Is that better?

THE COURT: So it's really -- so now I have to tell you a story. So, every year around Christmas time, I have a Cub Scout group come in, and you know, they're learning about the law. And of course, you know, to a bunch of nine- and ten-year-olds, the law is the Marshals come down and they tase one another, and so they think that's super cool, and I don't get them until after they do that.

And so I bring them in and, you know, obviously, this is a Bankruptcy Court and that's an impossible abstract thought, so we have a criminal case. And there's -- it's always a Santa Claus related thing, and someone stole cookies and Santa is accused of committing a crime. And so I have a little small person's robe, and so we have a judge. And then I get a couple of lawyers and they tell people what to say and they have an argument. And I have to put a box of copy paper right there for folks to stand on, which is what made me think of that.

And I had one -- I had one advocate get so excited that he fell off the box.

MS. BERKOVICH: Oh, no.

(Laughter)

THE COURT: And it was a message to this, so please be careful.

MS. BERKOVICH: I will be careful, and next -- I'm wearing flats. Next time, I'll wear my four-inch heels.

THE COURT: I'm going to -- I just hadn't noticed that before. I'll figure out a way to deal with that. I'll move it to the side or figure out how to lower it.

MS. BERKOVICH: Thank you, Your Honor. I think we have an interim solution.

Joining me today in the courtroom is John Singh from PJT Partners, the proposed banker to the debtors.

THE COURT: I see him.

MS. BERKOVICH: Rodi Blokh from AlixPartners, the proposed financial advisor to the debtors, and Russell Cann, who's the head of mining and Executive Vice President of the debtors. Also joining us today --

THE COURT: Find a way to put him on the stand. I really ...

(Laughter)

MS. BERKOVICH: I knew you'd like that. You mentioned it from the very beginning, Your Honor. But unfortunately, as I'll get to, we're unlikely to need Mr. Cann's testimony today.

Also joining us online via Zoom is Michael Bros, the

Senior Vice President of Capital Markets and Acquisitions of Core Scientific, who is our first-day declarant.

And we have a few other of our colleagues from Weil Gotshal. We have my partner Ted Tsekerides and my colleagues Jeremy Cain and Alex Cohen.

THE COURT: Good morning to the entire team. And if she left you out, she didn't mean it.

(Laughter)

MS. BERKOVICH: Did not.

Your Honor, we filed a revised agenda at Docket 426 today. We are very happy to be in front of you seeking approval for the proposed replacement interim DIP order and the terms for the consensual use of cash collateral.

To provide maximum notice of our change in circumstances, the second we had a deal, we filed the proposed order in the wee hours of Monday, January 30th, at Docket 378, and we attached a redline of the interim order that was entered by this Court on December 23rd, which had been Docket Number 130, as well as the termsheet. B. Riley is funding under a termsheet, given the speed with which we needed to reach a deal with them.

We subsequently filed our motion to approve the order at Docket Number 385.

And while we had coordinated with both the ad hoc group of secured noteholders and the creditors' committee

prior to filing the initial order, we continued to work with those groups, as well as our DIP lenders and our equipment lenders, around the clock to make changes to the proposed order to get to consensual among all the parties.

Just about an hour before the hearing, we were able to reach a fully consensual deal between the debtors, the ad hoc group, and the DIP lenders. So, again, we have consensual use of cash collateral.

I believe, based on email discussions, that the equipment lenders are also not objecting to the interim DIP order. They're reserving their rights with respect to the final order.

As a result of those changes that we made in the version that we filed -- and we have some extra copies of the blackline in the courtroom, in case people were not able to access it, given the late filing -- we're not a hundred percent sure, as Mr. Schrock said, whether any of the last-minute second changes would be acceptable to the creditors' committee.

THE COURT: Okay.

MS. BERKOVICH: And the revised order was filed this morning at ECF 424. My colleague Alex Cohen will walk the Court through the relevant changes.

THE COURT: Terrific.

MS. BERKOVICH: So, before I summarize for the Court

the benefits and terms of our replacement DIP order, I would like to move the Court to enter into evidence two of the three declarations that we filed on January 31st in support of our motion: First is the declaration of John Singh at ECF Number 390, and second is the declaration of Rodi Blokh at ECF 391. As I mentioned, they're both in the courtroom today and available for cross-examination.

THE COURT: All right. Thank you.

Does anyone have an objection, again, for purposes of today's hearing only, to Mr. Singh's declaration at CM/ECF Number 390, Mr. Blokh's declaration at 391? Any objection

(No verbal response)

THE COURT: All right. They're admitted.

(Singh Declaration at ECF 390 received in evidence)

(Blokh Declaration at ECF 391 received in evidence)

THE COURT: Anyone wish to cross-examine either one of those two gentlemen?

(No verbal response)

THE COURT: You okay? All right. And thank you, folks. Oh, Mr. Hansen, sorry. I just didn't see you.

MR. HANSEN: No, it's all right, Your Honor. So Kris Hansen with Paul Hastings on behalf of the ad hoc group and the existing DIP lenders, Your Honor.

We would just reserve. To the extent you permit the committee to put their witnesses on with respect to comps, et

cetera, regarding the fee, we would like to cross the debtors' witnesses because, obviously, they were declarants in connection with the original DIP. So, if we're going to get in a time machine and go back to when we were here originally, we need to have them on the stand to walk the Court back through the original testimony. And of course, we would like to elicit further testimony from them about the circumstances at the time of the original was entered.

I don't see a reason to cross them now, but I wanted to make sure that you understood that, if the committee does -- if you allow the committee to call its witness -- which we think you shouldn't -- but if you do, then our position is that we may have questions for the debtors' witnesses.

THE COURT: Got it. It seems an efficient way to proceed.

Any objection?

MR. MILLER: Your Honor, Brett Miller, Willkie, Farr & Gallagher, proposed counsel to the creditors' committee.

We have no objection to that. We would just like to be subject to the same reservation, in case we do go forward on, I'll call it a "contested hearing" with witnesses because Mr. Singh did have some testimony regarding -- in deposition, regarding what exit fees might be reasonable.

THE COURT: Sure. And at some point -- I don't want this to be -- I don't want this to be, in any shape, way, or

form, a surprise -- I'm going to ask you the question. You know, I assume it's unreasonable. Now tell me why it is I -- because I have to put the process first. Tell me why it is, having done what I did, even if you convince me that it's unreasonable -- and it wouldn't take a lot -- why should I change it?

MR. MILLER: Do you want me to start now?

THE COURT: If you would like to -- you're only going to get to do it once. So would you like to hear everything that's said and make the argument or do you want to --

MR. MILLER: I --

THE COURT: -- make the --

MR. MILLER: I'll let --

THE COURT: -- argument now?

MR. MILLER: -- Weil make their case, and then --

THE COURT: Fair enough. All right. Thank you. And you have the same reservation.

MR. MILLER: Thank you.

THE COURT: Yes, sir.

MS. BERKOVICH: We did file a third declaration in support of the DIP motion from Russell Cann, that's at Docket 392. But as I mentioned earlier, we will not be putting that evidence in today, given the equipment lenders, I believe, their agreement to -- not to object.

THE COURT: Got it. Do you need -- you said give your belief. Do you need to get confirmation of that or ...

MS. BERKOVICH: There were many of them. We just filed the final order. If any of them were to -- I see Mr. Lohan, who's been sort of an informal leader for the group. I don't know if he has the views of everybody, but --

THE COURT: Mr. Lohan, do you have your line unmuted?

MR. LOHAN: I believe I -- I believe I do, Your Honor. Can you hear me?

THE COURT: Absolutely.

MR. LOHAN: Good morning, Your Honor. For the record, Brian Lohan on behalf of Barings.

Ms. Berkovich is correct, we did file a limited objection at Docket Number 291. Several other equipment lenders joined that objection. But we think it makes sense, given the positive developments of the case, to just reserve our rights to the final hearing and we'll streamline the issues that need to be decided at the interim -- at this interim hearing.

THE COURT: All right.

MR. LOHAN: And you know, we support entry of the order and are not pressing forward the objection.

THE COURT: All right. Thank you for the announcement.

MR. LOHAN: Thank you.

MR. TWOMEY: Your Honor, if I may? Dennis Twomey. Can you hear me okay?

THE COURT: Mr. Twomey, absolutely. Thank you, sir.

MR. TWOMEY: Thank you, Your Honor. Good morning. And it's Dennis Twomey with Sidley Austin on behalf of NYDIG ABL, LLC.

Just confirming what Ms. Berkovich said, we also are not planning on objecting today, but do reserve our rights for the -- to the final hearing. We do believe we have an agreement. We've spent a lot of time. And thanks to Ms. Berkovich and her team over the last several weeks, we do think we have a resolution and expect that we'll be -- a motion will be filed here in the next day or two on that.

And in the meantime, we're not going to be objecting today. And hopefully, our resolution will ultimately get finalized and approved and we won't be objecting at the final hearing. But in the meantime, we do ask that we be permitted to reserve our rights for that final hearing.

THE COURT: Mr. Twomey, thank you for the announcement and absolutely.

MR. TWOMEY: Thank you, Your Honor.

THE COURT: All right. Ms. Berkovich?

MS. BERKOVICH: All right. So, Your Honor, on the first-day hearing, I told you and Mr. Schrock told you that we

would be seeking replacement DIP financing and that's what we've been doing for the last month plus, and working tirelessly to find financing that would eliminate the roll-up, eliminate the linkage to the RSA and the related milestones, remove the restrictions on selling actions to improve our liquidity, and provide overall better terms.

When we entered into bankruptcy, the debtors' liquidity was in dire condition. And I can say the original DIP lenders, the ad hoc group, saved this company by being the only party at that time willing to provide financing.

At the same time, you know, some of the terms of that DIP -- and I -- it's in -- very well in our papers, really were not the most favorable to the debtors, so we were looking for a replacement DIP facility that could provide greater value to all stakeholders than that of the original DIP credit agreement.

We understand that the debtors' constituents, other than the pre-petition secured noteholders, are thrilled with our new DIP. We've received no objections to it.

We know that the creditors' committee is supportive, they filed their statement at ECF 397. The Ad Hoc Committee of Equity Holders has told us they are supportive, and the same thing with the equipment lenders.

Our marketing process for this DIP was very robust. And the Singh declarations provide -- declaration provides a

great deal of detail about the negotiations with the various lenders we were talking to over the last week. But at the end of the day, the proposal that we were able to negotiate with B. Riley, our largest unsecured creditor, was the superior proposal.

We kept all of our stakeholders informed throughout the process. The major groups were not surprised when we reached a deal. We sent all of our DIP proposals to the UCC and the ad hoc group and we were in touch throughout with the equipment lenders, as well.

We did ask the ad hoc group whether it was willing to provide a DIP more in line with the terms of the B. Riley DIP. And while we were potentially amenable to improving some of the terms, they were not willing to go all the way there.

So, unless Your Honor has any questions about the process, I would like to summarize the key terms of the DIP.

THE COURT: Please.

MS. BERKOVICH: It's actually a very simple DIP, one of the things we like about it.

It's a seventy-million-dollar multiple draw term loan facility.

Today, we're seeking interim approval for a draw of 35 million of that facility. We will use those funds, along with cash on hand, to repay the original DIP facility and for general operating purposes. And we did have a budget attached

to the proposed interim DIP order.

The maturity is 12 months with a three-month extension. That compares to the 6 months with three-month extension we had under the original DIP.

The interest rate is the same, ten percent paid in kind.

The exit treatment is -- total payment at exit is 105 percent as the then-outstanding debt, as compared to the 115 percent under the original debt facility.

We are permitted to use the net proceeds of any asset sale -- to conduct assets and to use the net proceeds of any asset sales to pay down the DIP, whereas that permission was very restricted in the original DIP facility.

No roll-up, no RSA link, no real milestones except for a final DIP order.

And Your Honor, the one, I guess, negative of this new DIP is that we do have to pay the termination fee. And I will get to a little more about our views of that on the end. But you did ask a question about how that impacts our liquidity.

And I was passed a note by our financial advisor that the takeaway that the termination fee does not impact our cash or liquidity forecast, and also that the new DIP is still superior to the old DIP, even when taking into account that we have to pay these termination fees.

THE COURT: Okay.

MS. BERKOVICH: Also, these termination fees would have been payable at any time, anyway, for the refinancing of that DIP, whether it's now or later.

As noted in the Blokh declaration, this replacement DIP facility will provide the debtors with the liquidity necessary to pay off the original DIP facility, fund payroll, and satisfy other working capital and general corporate purposes. And it is the debtors' business judgment that this is the best DIP available.

As noted, we reached agreement with the ad hoc group over the terms for the consensual use of cash collateral.

Their adequate protection package is, for the most part, similar to what we had included in the original interim order: Replacement liens, 507(b) claims, and the payment of professional fees.

There were some complicated issues relating to the different lien priorities by different parties over different assets and how that would all work by layering the DIP in there. The DIP is non-priming as to the existing liens, but taking a first lien on unencumbered assets.

But we are grateful, again, to all the parties -- the DIP lenders, the equipment lenders, and the ad hoc group -- for working through these issues to get to a final resolution.

We do have an Exhibit 5 to the proposed order that provides an illustrative chart of how the lien priorities work with respect to different assets. There's up to six different liens that are applied to each different group of assets.

And unless there has -- Your Honor has any questions, before turning the podium over to Mr. Cohen, I just -- I want to reiterate the debtors' position on the termination payment.

We do not agree with the committee's position. Those fees were properly disclosed to the Court and all parties-in-interest in both our written and oral submissions to the Court, and they were approved in the interim order.

We also believe they were reasonable under the circumstances as part of the overall package of terms in the original DIP facility, which, at the time, was the only financing facility, financing option available to the debtors. This was supported in the Singh declaration at Docket 98.

Your Honor mentioned changed circumstances. There were no changed circumstances. We were in front of you 40 days ago saying we want to find the replacement DIP, if we find that DIP in 4 weeks, these are the fees that will be paid. That's exactly what happened.

And one more point. And I mostly represent debtors, our firm does. And you know, I personally worry about the chilling effect to the ability of a company distressed to be

able to get a DIP loan if the DIP lenders have to worry that what they negotiate with the debtor and approve -- get approved by the Court is later subsequently challenged.

So those are our views. Does Your Honor have any questions?

THE COURT: I do. So I just -- I think what I heard you say -- and I just want to confirm it -- is you're telling me that the debtors exercised their business judgment in deciding to go forward with this, believing they were going to have to pay the termination fee.

MS. BERKOVICH: Yes, Your Honor.

THE COURT: Okay. I got it.

Anything else?

MS. BERKOVICH: Nothing else?

THE COURT: All right.

MS. BERKOVICH: Thank you, Your Honor.

THE COURT: Thank you. All right.

Mr. Cohen, good morning.

UNIDENTIFIED: Oh, sorry.

(Participants confer)

MR. COHEN: Good morning, Your Honor. Alex -- oh. Alex Cohen, Weil, Gotshal & Manges, for the debtors.

THE COURT: Yes, sir. Thank you. Good morning.

MR. COHEN: Good morning.

First, I want to say that, next time you do the Boy

Scout trip, I would suggest that the Santa obtains replacement DIP financing could be a good topic.

(Laughter)

MR. COHEN: I'd be more than happy to write a problem for you.

THE COURT: I'm going to keep that in mind.

MR. COHEN: Thank you, Your Honor.

(Laughter)

MR. COHEN: And second, I always -- whenever people walk through these orders, I think it kind of gets a bit tedious to go through every single change. So I think what's probably more useful for the Court -- and please correct me if you disagree -- is to highlight some of the high-level changes.

THE COURT: So I think -- I started reading it and I stopped. What I'd like to do -- and you'll just have to take a deep breach because you'll know this far better than I do -- is let me get 424-2 up. And then, as you walk me through, if you could give me a page reference using 424-2, that would be helpful. And so I have it up.

MR. COHEN: Okay.

THE COURT: Where would you like to start?

MR. COHEN: So I think, first, I'll note that it looks a lot blue and -- more blue and more red than the changes actually are. More -- a lot of the changes are

clarifying, to make sure that -- some of them are defined term fixes, some of them are --

THE COURT: No, I --

MR. COHEN: -- just --

THE COURT: -- agree.

MR. COHEN: -- technical corrections.

THE COURT: Yeah.

MR. COHEN: But I think the place that we should start is on Page 15 of the redline.

THE COURT: Okay. Let me --

MR. COHEN: Uh-huh.

THE COURT: So I can go to 15 of 101?

MR. COHEN: That's right.

THE COURT: Okay.

MR. COHEN: You should be able to, yeah. It's -- this is -- at the top, it says "cash collateral." Is that what your exhibit shows?

THE COURT: No.

MR. COHEN: No? Different page numbers?

(Participants confer)

MR. COHEN: It's --

THE COURT: Do you want to see what I'm looking at?

MR. COHEN: There we go. If you scroll down to the next page. Yep, down more. Oh, 15 at the bottom. I'm sorry. I'm referring to the page numbers at the bottom. There we go.

15 at the top.

So this clarifies -- there we go -- the definition of "cash collateral," just clarifying the definition of "cash collateral." After discussions with the ad hoc group, all parties agree with this definition. Just minor changes to ensure the proper scope.

THE COURT: Okay.

MR. COHEN: Okay. Next is Page 19 at the bottom. This deals with approval of the budget.

So the ad hoc group has consent rights over the budget, as well as the replacement DIP lenders. However, if there's a disagreement between the two parties; so, if somebody says yes, somebody say no to approving the budget, then the provision at the bottom and then the top of Page 20 clarifies that, in the event of a conflict, the judgment of the replacement DIP lender would govern. However, all -- the ad hoc group has the right to come back to court on an emergency basis to dispute any issues, and Your Honor can hear them in a budget resolution event.

THE COURT: Okay.

MR. COHEN: All right. The next page I go to is 21, the last paragraph of Page 21. This is the 506(c), 552(b), and marshaling waivers. It appears a couple of places throughout, but this is the first place.

And as Ms. Schrock previewed, the 506 and 552(b)

waivers are granted. But to the extent that there's a cash collateral termination event, those would burn off. And there's a paragraph at the end of the order to that effect.

THE COURT: Okay. Make sure you reference that for me, if you would.

MR. COHEN: Yes, Your Honor.

THE COURT: All right.

MR. COHEN: The -- and then the rest of the changes on Page 22 reflect that change, as well.

Okay. The next place I go is Page 28 of the redline, at the bottom. This is clarifying that the debtors will pay all of the reasonable and documented fees of both the ad hoc group and the replacement DIP lenders, regardless of when they arose, related to the DIP financing.

THE COURT: Okay.

MR. COHEN: Okay. The next place is the top of Page 30. This paragraph relates to any modifications, amendments, or changes to DIP loan documents.

Effectively, this limits the ability of the debtors and the replacement DIP lenders from making modifications without asking the ad hoc group and, in certain cases, getting consent; or, if they can't get consent, coming to court and asking for material modifications.

THE COURT: All right.

MR. COHEN: Okay. The next place is the footnote at

the bottom of Page 36.

Now, because of the timing of how this all sequences, the refinancing will happen no later than five business days after Your Honor enters the order. So there's a small gap period in which we have to pay off the pre-petition secured parties. And this provision clarifies that, during that gap period, there are certain things that the debtors can't do, preserve -- basically preserving the status quo under the original DIP order.

THE COURT: Got it. All right.

MR. COHEN: Okay. And then the next place is the middle of Page 38 of the redline. This is another reference to the pay-down and the refinancing within five business days of the entry of the order. Again, this is all to protect the status quo in this gap period and also making sure that it's clear that adequate protection rights continue.

Bottom of 38, top of 38 -- excuse me, top of 39. This is the same -- a similar provision, and except for, to the extent that we're selling -- the debtors' are selling pre-petition secured parties' collateral, there are certain procedures we have to follow and making sure that, to the extent they don't consent, that we have to come to Your Honor or otherwise follow the provisions of this interim order.

So a lot of these provisions throughout, you'll see we can't sell their collateral outside of the provisions of

the order. There are certain guardrails baked in, and you're seeing that throughout in a lot of these paragraphs.

The next is the bottom of Page 40. This also relates to the budget consent rights.

The (m)(2) in the middle of Page 41, it says that, notwithstanding anything in here, that DIP professional fees, notwithstanding anything, that professional fees will get paid, even if there's an issue with the budget; and also, that the replacement DIP obligations and DIP professional fees are not included in variance testing of the approved budget.

And then, finally, that the repayment -- the payment of replacement DIP obligations is not, in and of itself, a cash collateral termination event. This is, again, protecting against an issue of a dispute with the budget.

Next is the middle of Page 43. You'll also see a lot of these provisions throughout, and I won't highlight it everybody. But this -- effectively, what we did in the order is preserve the current waterfall, as Ms. Berkovich mentioned, but layer in the addition of the DIP liens and the DIP obligations, so that's a lot of these changes.

Page 13 -- or excuse me -- Page 48, Paragraph 13. Again, this is the mechanics of the refinancing.

You'll see a reference in the order of -- to a payoff letter, and that's in process. It's almost done. There's okay a couple of terms that are being discussed at

this point. So we intend to file a revised form of order with that attached as an exhibit. Right now, we just have a slip page. But the parties are all working together on that payoff letter.

Page 58 at the bottom, this is Paragraph 20(b) as in bravo, five eight. Oh, this is more clarifying changes regarding the refinancing. Yep. And -- no. Yeah, the 58. There we go.

So another thing that we did to compromise and come to an agreement here is to allow that the ad hoc group, the pre-petition secured parties, have certain rights in the event of -- in the event of default or similar type provisions in this agreement. We spell it out in a couple of paragraphs.

And effectively, if there is a cash collateral termination event, then it triggers a similar remedies notice period to a DIP. And it's all subject to the Southern District rules regarding coming in and trying to seek to lift the stay. And you'll see that in Pages 60 through 63, that's all that blue.

(Pause in proceedings)

THE COURT: All right. Thank you.

MR. COHEN: Okay. Next, Page 73. We skip a lot of pages here. Page 73, and then it spills over into the next couple of pages, this is all related to the challenge and everyone's right to challenge and making sure that it's clear

who can challenge what and when.

Effectively, everyone has the right to challenge everybody else's liens, claims, obligations, basically just preserving parity for all parties to have similar rights to challenge. You'll see that a lot of the challenge provisions that we initially baked into the DIP order have not changed. This is mostly clarifying who can challenge what and when.

THE COURT: Okay.

MR. COHEN: Okay. Next is Page 80. This is, again, the 506(c), 552(b) equities of the case and then the marshaling provisions. This is similar to what we discussed earlier, just flagging again that it's here.

And then 28 into 29 -- or excuse me -- Paragraph 28, 80 and 81 pages, are respect to credit bid rights of the parties, clarifying everybody has the right to credit bid with respect to the obligations that are set in this order.

Okay. Next is Page 83, Your Honor, the protection against material amendments or modifications to the order or any documents. Again, if there's any dispute or disagreement, everything is set out here and pretty granular detail.

Okay. For -- I think there's only a couple left. The next is Page 95, Paragraph 43. This is the technology that Mr. Schrock was referencing that we spoke about earlier; that, in the event of a cash collateral termination event, that the equities of the case and the 506(c) waiver burn off.

THE COURT: Okay.

MR. COHEN: And this last set of blue that you'll see, Paragraph 44, it's a lot meatier and longer than it actually is. It's -- it effectively preserves intercreditor rights with respect to certain rights, obligations, liens, et cetera, everything that Ms. Berkovich and I have spoken about regarding the status quo, but layering in the DIP obligations, to make sure what happens to whom and who has rights over what in the event of any occasion that could occur. So we tried to bake those protections in and to preserve the status quo.

And then the final portion of the order is just setting a date for the final hearing. And we have a proposed date in mind, but I don't know if you'd prefer that we reach out to your chambers and schedule, or if you just want to do it live.

THE COURT: What date were you looking for?

MR. COHEN: February 27th is what we were targeting, it's a Monday.

THE COURT: And do you have a time in mind?

(Participants confer)

MR. COHEN: Afternoon works better.

THE COURT: So I would have 2/27 at 3 p.m. central available, if that works and assuming that we get to the end today.

MR. COHEN: That sounds good, Your Honor. We'll put

it into this order whenever we submit the revised.

THE COURT: All right.

MR. COHEN: And nothing further. Thank you, Your Honor.

THE COURT: All right. Thank you.

All right. Yes, sir.

MR. VENTOLA: Hello, Your Honor. My name is John Ventola from Choate, Hall & Stewart, counsel to B. Riley in their capacity as the proposed replacement DIP lender.

I really just wanted to introduce myself to the Court, Your Honor. And of course, if you have questions, happy to answer anything we can. My firm is new to this. We only got involved about eight days ago. It seems longer, candidly. But we've been working very cooperatively with the parties-in-interest to get to where we are today. And again, if you have any questions, Your Honor, please let me know.

THE COURT: Got it.

MR. VENTOLA: And --

THE COURT: Number one, welcome to the dance.

MR. VENTOLA: Thank you, Your Honor.

THE COURT: It's -- I don't at present.

MR. VENTOLA: Okay. And I just wanted to confirm -- Mr. Schrock mentioned it in his opening remarks -- B. Riley's intention is, in fact, to resign from the committee if this is approved.

THE COURT: Yeah, that's kind of a given to me, so I -- but I appreciate you --

MR. VENTOLA: Thank you, Your Honor.

THE COURT: -- saying that for everyone.

All right. Mr. Hansen?

MR. HANSEN: Yes, Your Honor. Kris Hansen with Paul Hastings on behalf of the ad hoc group and the existing DIP lenders.

Your Honor, did you want to hear on the affirmative side or did you want to hear from the committee first from an argument perspective and then --

THE COURT: Yeah.

MR. HANSEN: -- from us?

THE COURT: I want to deal -- I want to understand the evidentiary presentation. You'll certainly have time to come back on argument and -- but I want to understand what the committee is proposing to do. And given where the record is now, where they think, whatever it is that they want to present is going to be persuasive. So let me do that and then we'll circle back around.

MR. HANSEN: Fair enough, Your Honor. And obviously, we reserve because our view is we don't think they should be --

THE COURT: No, you --

MR. HANSEN: -- permitted --

THE COURT: I --

MR. HANSEN: -- to put evidence on.

THE COURT: I want to get --

MR. HANSEN: But I'll come back --

THE COURT: -- this on the table --

MR. HANSEN: Yep.

THE COURT: -- because I want to understand it.

All right. Mr. Miller.

MR. MILLER: Thank you, Your Honor. Brett Miller, Willkie, Farr & Gallagher, proposed counsel to the creditors' committee.

Your Honor, as you know more than most people, it's your order. And having spent the last three years in a case across the hall with Judge Isgur, the Sanchez case, we've been fighting over a DIP order that is long since approved and have had multiple hearings, multiple mediation sessions. And at least here, we're only five weeks later, we're not three years later.

And Judge Isgur said something during the multiple hearings that he wants to get it right.

THE COURT: Uh-huh.

MR. MILLER: And there are a lot of words in the DIP order there, and a lot of people interpreting the words how -- as favorably as they can for their party.

Here, I think we have a little bit of a different

scenario. Both sides seem to focus on 30(d) of the DIP order and whether the termination payment is actually part of the package that I'm sure Mr. Hansen will say was part of the pricing of the DIP because I disagree with the statement in the ad hoc group's pleading filed this morning that a finding that, if we open up the termination payment provision -- and the committee does not dispute a termination payment is -- can be paid here.

It's a question of the reasonableness and that's ... so, using the replacement DIP as a basis and a -- I think Ms. Berkovich said a 105 percent -- I'll call it a "5 percent termination fee," that's about $2 million --

THE COURT: Uh-huh.

MR. MILLER: -- whereas the interim order included a 15 percent payment or $6 million. So we're talking about a four-million-dollar delta here.

And if you look at the comps that are in the various -- in the declaration submitted by the committee, 15 percent is out of whack --

THE COURT: Uh-huh.

MR. MILLER: -- 5 percent is around normal. And I believe, if we actually went forward and put our witness on the stand, it would be hard to find otherwise. And I think, if Mr. Singh was put on the stand and cross-examined, he would find the same because we've seen a DIP comparison chart that

he's prepared.

So, to your point, the 15 percent fee is unreasonable. And the question now turns back to: How can we -- should we be determining whether an interim order that approved a termination fee on 24 hours' notice without a committee being formed satisfies the requirements of Bankruptcy Rule 4001(c)(2), Section 364, and perhaps most importantly 30(d) of the interim order because 30(d) says two things -- well, it says multiple things, but two things that are highlighted, one by the ad hoc committee and one by us.

And I don't know if we can put that on the screen. You can actually, I think, use the version that Mr. Cohen was just going through because it -- I think 30(b) stayed the same.

THE COURT: Sure. I can do it either way. I can give your person control, I can put back up what we were just looking at.

MR. MILLER: I think --

THE COURT: Which would --

MR. MILLER: Why don't we -- why don't we put back up what was just on?

THE COURT: Give me just two seconds.

(Participants confer)

THE COURT: And paragraph -- you said 30(d)?

MR. MILLER: 30(d), I think it's Page 86.

THE COURT: Ah.

MR. MILLER: It's a really long order.

(Pause in proceedings)

MR. MILLER: So the -- yeah. The ad hoc group, in its statement, focuses on 2(I), the validity or enforceability of any obligation, indebtedness incurred under this interim order or the replacement DIP loan documents, et cetera.

Question: Was or is the termination payment incurred at the outset, as opposed to the other fees that the committee doesn't challenge? There were the up-front fees that have been paid that no one is seeking to disgorge. We are simply looking at the termination payment. And as I said, it's approximately a four-million-dollar delta from what we think is reasonable, versus what is being requested.

But when you look at 4(I), it talks about or the payment of any fees, costs, expenses, or any amounts to the replacement DIP secured parties, blah, blah, blah, in the case prior to the actual receipt of the written notice of any replacement DIP agent or the pre-petition agent on the -- as of the effective date of such reversal, stay, or modification, or vacatur.

I really have to question whether the payment -- that these fees were not payable at the interim hearing. They are contingent payments that could, might, may become payable later. And quite simply, we believe that's the purpose of

having an interim order or a final order two weeks, four weeks, five weeks later. That's what is intended by the Bankruptcy Rules, that is intended by the Bankruptcy Code.

And where the ad hoc group thinks this is going to turn DIP financing on its head, I actually think it's the reverse because how -- if this is approved now and the committee is basically neutered in any future discussions regarding reasonableness of fees, then the next lender might as well throw in a hundred percent termination fee because the debtor has no choice.

I think what Ms. Berkovich said was the fee was reasonable under the circumstances. Well, and yes, the circumstances changed. And we understand that the debtor made the deal. We don't dispute that the debtor cut this deal, they could the best deal they could do. But they ran to court with a deal that, upon scrutiny by a creditors' committee, upon -- if we were to put on witnesses, they would show it is unreasonable by approximately $4 million.

Then what is the purpose of a whole bunch of sections of the Bankruptcy Code and laws and rules regarding finding things reasonable before you use estate funds? Because the use -- the approval of this will deprive unsecured creditors, other stakeholders, other secured creditors of $4 million because that's what this comes down to.

It is a -- I'll call it an "up-front smash and grab"

of $4 million here, above what's reasonable. And what will happen, I think, is the next lender is going to do the same, and then, after that, the same. And before we know it, the chart that our witness and Mr. Singh would put up of comps, it's going to be littered with 15 percent across the board, and that's going to become the new mean and median for DIP termination fees. And it really, really shouldn't be because today should be the day that it stops.

And just like Judge Isgur, you should say I want to get it right, and right is to limit the termination payment to what is reasonable. And we would put on evidence, if asked, that something in the neighborhood of a two-million-dollar payment is reasonable.

And with that, I'll rest. And I'll say, Your Honor, if -- I think we need to decide on the order first. And if you completely disagree with me -- which it's your order, again -- then we will not put any evidence. If this has opened the door for putting on evidence or for Mr. Hansen and I going in the hall room and -- in the hallway and having a conversation, then we're happy to do that because this can be litigated, it can be settled.

But we defer to Your Honor, it's your order again. And I just do think, for the sake of the Bankruptcy Code and this case, we should get it right. Thank you.

THE COURT: Okay. Thank you.

All right. Mr. Hansen.

MR. HANSEN: Thank you, Your Honor. And Your Honor, Kris Hansen on -- with Paul Hastings on behalf of the ad hoc group and the existing DIP lenders.

Your Honor, I'll start where Mr. Miller left off. It was not a smash and grab. The concept of that ignores the reality of how the debtor came to this courtroom when it filed for bankruptcy.

If you look at 4001(c)(2), you have to determine whether the debtor is going to be the subject of immediate and irreparable harm. And you have that from an evidentiary showing, both in the Bros declaration and in the Singh declaration. You also had it based on the presentation provided by the debtors' counsel.

Debtors' counsel pointed out at that point in time that there was a single DIP lender that was prepared to lend to this company. And if we look at that moment in time that the debtor filed, the price of bitcoin -- and you -- actually, Your Honor, I want to step back for a second.

You complimented the debtors on the first day on the persuasiveness of the first-day declaration. And it was a great read because it explained the debtors' business in pretty easy to understand terms, and these are not the easiest businesses to understand. Many of them have filed for bankruptcy. They do different things, but they are connected

across the -- I won't say -- I won't use it. They are connected by their digital currencies.

So the point being, Your Honor, that, at the moment that the debtors found itself here, bitcoin was somewhere in the range of $16,000. And this business, as Mr. Bros' declaration pointed out, is singularly tied to the volatility of that underlying currency.

I don't want to address the comps in the sense that I would like to cross-examine the witness if that happens, and we'll go through them comp by comp. But it's obvious that none of them are a digital currency business, none of them are so singularly tied to the underlying volatility associated with the currency here.

So the debtors went out, they ran a process. Mr. Singh pointed out in his declaration that there were 24 parties that they approached. They had 9 confidentiality agreements executed, they had two indications of interest, and they had 1 party prepared to lend.

I think, as you can also divine from the motion that was filed to approve the DIP financing, even the DIP lenders, the members of the ad hoc group, they weren't all in on the DIP. If you recall, when we were here at the interim hearing, there was going to be a syndication process run between the interim hearing and the final hearing to try to find more.

The debtors had asked for a higher commitment amount

and the members of the ad hoc group didn't get there initially. And the reason they didn't get there was the volatility associated with this company. It's a pretty scary DIP. And so what you also have is endless testimony about the arm's length negotiation and the good faith nature of those negotiations.

There was nothing there to demonstrate that there was a smash and grab or there was some type of untoward influence exercised over the debtor. You heard Ms. Berkovich just say it, the interim DIP saved this company. Without that interim DIP financing, again, go to the declarations. There -- the debtors said that they had $4 million of liquidity as they entered bankruptcy. I -- we can ask the debtor, if we get to that, if that number might have even been lower as of the day that it was here in the court, before it was able to get authorization to borrow on the interim DIP. And it borrowed right away on the interim DIP. That money helped to save the business, so that it could ride to where it is now.

And really, what's happened is the debtors have exercised their business judgment twice. They exercised their business judgment soundly and reasonably at the beginning to enter into the first DIP. And now, given where bitcoin prices are today -- and no one -- right? There is no forward curve for bitcoin. It's not like the power curve. We don't get to look off into the future. We wake up every day --

THE COURT: We wish --

MR. HANSEN: -- and --

THE COURT: -- there were one, right?

MR. HANSEN: Yeah. We wake up -- seriously, we wake up every day and these prices are up or down, and we really don't know where they're going, and sometimes we really don't even know what they're driven by.

And so, Your Honor, the debtor is making another business judgment call, and that business judgment call is I'm going to enter into a new DIP and I am going to repay the old DIP, which takes us back to where I was going to start, Your Honor, which is:

There is an agreed-upon deal. That deal was set forth before the Court. And candidly, even Your Honor said I'm aware that this is expensive, but I am also aware of the volatility associated with this business and I get it. And you said to the folks in the courtroom, most notably B. Riley's attorney, I hope you come back with a less expensive DIP, so -- or a less onerous DIP. And you know what? Those were circumstances that all were foreseen at the time that you approved the initial DIP.

And so the DIP lenders on my side, they made their commitment. They said we will advance our funds based upon the documents that we've negotiated and the order that Your Honor will enter that protects the promise that they made to

advance those funds to the debtor. The debtor took those funds, moved forward, saved their business. And it allowed them to come before the Court with the motion that they ask the Court to approve today.

And beyond the multitude -- you know, Mr. Miller likes to focus on 30(d) and says let's singularly look at that. It's really important and I'm going to come back to that in a second.

But the entirety of the order -- when you go through, there are only certain sections that say subject to entry of the final order, right? Those are things like the roll-up, those were things like the 506(c) waiver and the waiver on 552(b) equities of the case. Things like that say subject to entry of the final order.

But the other -- and it's far too long, all these DIP orders are far too long at this point. But the rest of the DIP order itself is replete with provisions that say all of the DIP documents are approved, the obligations that are created thereunder are approved, the debtors are authorized to enter into those. This is an encyclopedic document which approves the DIP deal that the debtors entered into.

But most importantly, those are also protected by the concept of good faith. And when you look at Section 364(e), it's there for a reason. And Your Honor knows that and you've incorporated it into this order in multiple places.

It protects the superpriority administrative expense claims, it protects the priority of the liens, and it protects the underlying aspects of the DIP financing in toto. And so, when you look at 364(e), parties have to rely on that.

And to just put this one to bed, the order says whether it's overturned on appeal or otherwise. And the "or otherwise" would be a collateral attack. Your Honor, we would go so far as to say that this order having been entered, candidly, based on all of the findings that were before it, is law of the case at this point in time, too.

And to overturn that order, I guess you'd have to prove that somebody defrauded the Court or that somebody defrauded the debtors. The standard can't really be that, well, today, because the underlying currency that dictates the value of this business is 30 or 40 percent higher than it was on the day we filed, we should go back and tear up and rewrite the promises upon which everybody relied when they entered the court in good faith.

Your Honor, I would also point out that, if you think about it again, the circumstances that the debtors entered weren't just the lack of liquidity. In those declarations, you can look and see they defaulted on their equipment loan debt pre-petition. They weren't paying anybody. They issued a press release. The that the ad hoc committee was organized was they woke up to find a press

release by the debtors saying that they were no longer in the position to be able to pay their equipment lenders and that they were -- they might not be able to survive as a going concern.

So the ad hoc group quickly organized to engage in negotiations at the request of the debtor, and they did. But during that time, the debtors were not paying the equipment lenders. And one of the equipment lenders actually accelerated and then cross-defaulted the convertible notes.

On top of that, the debtors had, as reported in their declarations, an endless amount of unpaid loans on all of their construction facilities, which resulted in mechanics liens. So this wasn't like a debtor that the ad hoc committee had over a barrel.

And I think I pointed out at the first day, too, Your Honor, the members of the ad hoc committee are the original purchasers of these notes. This is no -- this is not a situation where, you know, a sophisticated distressed community is trying to take advantage of a debtor. These convertible noteholders were hoping that they would be able to convert their notes into equity at some point and ride the wave of great returns associated with those notes.

So, when -- again, Your Honor, putting things in the context that we have to look at them, which is where were we when you approved the DIP and we entered this courtroom, the

circumstances may be different today, but that doesn't allow us to overturn the order that you entered based upon all the factors that everyone foresaw at that time.

And again, Your Honor, I come back to the point that this is not the business judgment of the convertible noteholders that's being imposed on the debtors. The debtors, it was their business judgment to enter into the DIP and it's now their business judgment to eliminate the RSA and to move into this current DIP.

I -- we don't -- from an ad hoc committee perspective, we're a little bit nervous about that. We now have no way out of this case. We're all going to sit down and we're going to negotiate and see if we can get there. But bitcoin can go down just as much as it can go up. And the ad hoc committee is fearful that, as the largest secured creditor and, you know, depending upon where regulators are, maybe a very large unsecured creditor, as well, that we're going to suffer the risk of that volatility more than most.

And so, from our perspective, we understand. We chose not to fight with the debtors today. We said, fine, if you'd like to refinance us, honor your obligations, we'll negotiate an order with you moving forward from a cash collateral perspective, and let's get to it, let's try to find a way to get out of this bankruptcy case pretty quickly.

So, at a reasonableness level, the ad hoc committee

and the existing DIP lenders have been about as reasonable as they possibly can be. They extended credit, they saved the company. They allowed the company to get to where they are now. They've stepped out of the way to allow B. Riley to come in, they've negotiated a good order, and we're prepared to move forward. None of that is a record where this Court should revisit its initial decision to put the DIP in place, and that DIP should be honored.

And from a policy perspective, I couldn't disagree more with Mr. Miller. Your Honor, if the sanctity of the order is to be relied on, which is what we're all talking about here, it needs to be relied on. That's not going to turn around and let predatory lenders suddenly say to a debtor who might be in extremis, ah hah, I can charge whatever fee I want, and as long as I get it approved on an interim basis, I'm good because the reality is there should be a competitive process that results in the DIP that's being presented to the Court.

And you, Your Honor, if somebody walked in and said I want a hundred percent fee, might say, you know what, the creditors might be better off if this company liquidates than if it takes your DIP financing. And that's in -- within your discretion to determine at the time. And your discretion at the time that this DIP was presented to you was to approve this DIP with its termination fee.

And when we go to the provision that Mr. Miller looks at in the DIP order, just for good purpose of going to that, on Paragraph 30 --

UNIDENTIFIED: It's on the screen.

MR. HANSEN: -- you go to (d), and it says in (I)-- I'm sorry -- (ii):

"The validity and enforceability of any obligation incurred under the interim DIP order or the loan" -- "the DIP loan documents" --

The obligation, which is a fee associated with the repayment of something that's borrowed, occurs at the time that you enter into the contract that provides for it, so that obligation was incurred as of the time of entry. And obviously, there is the whole point about the payments, which are protected by the good faith standard, too, when they're made.

So, Your Honor, on that record, which was the record before the Court at the interim hearing, and the arguments that are presented today, we ask that the Court continue to enforce the interim order. Let the debtors go where they need to go next and stop what's happening here and let everybody rely on the sanctity of the order that you entered and we'll see where we can get -- hopefully, get the case out quickly.

We don't believe that evidence should be taken because we think putting in evidence would open up the

evidentiary record associated with the interim order, which was closed, and we would have to revisit that. But again, Your Honor, we reserve our rights, to the extent that evidence would be taken, not only to cross-examine the committee's witnesses and call the debtors' witnesses, but potentially to call our own.

THE COURT: All right.

MR. HANSEN: Thank you --

THE COURT: Thank you.

MR. HANSEN: -- Your Honor.

THE COURT: Yes, sir. Good morning or --

MR. MEISLER: Good morning, Your Honor.

THE COURT: -- good afternoon, at this point.

MR. MEISLER: True enough. I'm tempted to take Ms. Berkovich's binder, so I can get a little taller over here.

(Laughter)

MR. MEISLER: Your Honor, Ron Meisler of Skadden Arps on behalf of the Ad Hoc Group of Equity Holders, representing approximately 70 million shares or nearly 20 percent of the outstanding amount of shares, including insider shares.

Your Honor, we're going to be brief, and that's going to be consistent with what we're seeking, generally, in these Chapter 11 cases.

Your Honor, we support the creditors' committee's view. We heard what you said. The fee is unreasonable, a 544 percent IRR is unreasonable. Maybe it's punitive. One thing is for sure, it's an unfortunate use of money. And we recognize it's not material to the overall liquidity of the business, but we're trying to stay focused. Is it a good use of money? Probably not.

Your Honor, we think that there's two, maybe three issues:

One, due process. Fundamentally, due process. They got it approved on December 22nd, the day after the petitions were filed.

THE COURT: Right.

MR. MEISLER: I wasn't here. Your Honor, my -- the clients that I represent, they didn't have counsel to represent them. It's a due process issue. Maybe it's binding on the debtors, maybe it's binding on other people that appeared in these cases. But Your Honor, we do think it's a due process issue.

Your Honor, with respect to business judgment, that's a fair point, one that we acknowledge. But let's remember Judge Wiles' decision in Pacific Drilling in September of 2018. No one objected to the fees associated with the rights offering. Nonetheless, Judge Wiles took the position that the fees were excessive; and, therefore, he

denied the request.

The other thing, Your Honor, quite candidly, business judgment: Did the special committee know specifically about the termination fee and what it would cost in return to the lenders if the DIP was replaced 40 days later? I don't know. But if they didn't, I don't really know how they could have exercised business judgment with respect to that punitive fee.

Your Honor, the other issue is I think, as you have suggested at the beginning, thoughtful consideration of this issue, including whether such an incredibly high rate of interest enforceable under applicable law. I think, for that reason, it's worth taking that break. The parties should brief it. We, on behalf of the ad hoc group, we would coordinate with the creditors' committee because, if there's no reason for us to brief it, we won't.

THE COURT: All right. So, again, I know you don't know me. Your colleague does. When I suggest taking break, I measure that in terms of minutes, not days.

(Laughter)

MR. MEISLER: Understood, Your Honor.

THE COURT: Right.

MR. MEISLER: If the minutes are sufficient for parties to brief it, that would be great.

(Laughter)

MR. MEISLER: If they're insufficient, Your Honor, of course this group defers to your judgment. And with that, Your Honor, those are my comments --

THE COURT: All right.

MR. MEISLER: -- and thoughts.

THE COURT: Thank you.

MR. MEISLER: Thank you.

THE COURT: Thank you.

All right. Let me do this. And number one, I very much appreciate the arguments. I appreciate great lawyers doing great things. And it, quite frankly, makes my job a lot easier when I don't have to round off the edges.

This is actually relatively simple for me. There are a number of competing concerns that drive everything I do:

Number one, the process comes first. And if parties can't rely on the process, then, given how fragile the process is and the responsibilities that you all have, then it doesn't work. This is not like being in District Court with a plaintiff and a defendant. It's just very, very different.

You've also got a huge number of involuntary participants who don't understand the process, who try and make sense of it along the way.

And again, my orders have to mean something. I'm aware of what Judge Isgur said in the Sanchez case, I've -- I think I've mediated it twice. I understand the issues. I

understand what he meant when he said I just want to get it right, and that's because he's interpreting various provisions that he put his name on, and I know which provisions they are. And this is so far afield of that, that it's not really an appropriate analogy. Of course we all want to get it right. There's no other reason that we sit here other than to get it right.

I also want to make it clear about business judgment. Business judgment doesn't mean that I decide what I would have done. That's not the definition of business judgment at all. Business judgment is a party being well informed, recognizing the obligations that they owe, making a thoughtful, considered decision. You can exercise proper business judgment and be flat-out wrong. It's the process that you go through that is the business judgment evaluation.

And I agree with -- I agree with the comment that was made, I think it was by Mr. Hansen, is that business judgment has been exercised twice:

Once, when faced with a set of circumstances, the debtor exercises business judgment and says, if I want to see tomorrow, here's what I've got to do. It got that opportunity.

It's now seen tomorrow and it's rosier than perhaps it thought it was going to be. Obviously, there could be a sunset today and a new day tomorrow and there could be a

further exercise of business judgment that calls into question the decisions that got made previously. That's the whole concept of business judgment. It's the process, it's the thoughtfulness, it's the being aware, it's the being educated. It's making sure that you understand, not only the issues that run in your favor, but those that run against you.

There's also another fundamental comment that I just believe in just to my core, and that's for every action there has to be a consequence. Sometimes those consequences are positive; sometimes they're negative. The fact that the debtor has exercised its business judgment, and I believe in a proper fashion, there's a consequence to having exercised that business judgment, and it's the payment of that fee.

Again, you know, do I wish that I had questioned it more? I mean, I didn't like the deal when I got it. I thought it was incredibly expensive. And I was just looking at it from sort of an outsider's viewpoint going wow, is this really where we are. And I spent a lot of time talking to my intern about how you actually view these things and how you have to make a decision whether it's right or wrong.

And I think I said it on the record, I said -- I also think I said, you know, I'm somewhat amazed about how folks are able to quantify risk, given at least what I knew at the time, that I wouldn't know where to begin, given where the market was.

When I put all of that together, again, it's -- parties have to be -- have to rely on my orders. If my orders are always subject to somebody coming in and saying something different in an effort to get me to change it, then the process just fails. If I got it wrong, then I'll do a better job next time of trying to provide more avenues.

I'll encourage the U.S. Trustee to add this to the list of things that they look at when they look at these interim orders because that's the voice, at that point in time, that's speaking for those parties that aren't here.

I just -- again, I got it that it's $6 million. But the process is far more important than $6 million. Your ability to go out and say I have this order and Jones signed it and it's final is far more important than $6 million. If $6 million turns out to be the price of success versus failure in this particular case and it's failure, then I'm prepared to live with that because the process has to be bigger than any particular case.

So I am -- based upon the record that I've got, based upon just looking at this, I am -- I endorse the debtors' business judgment. It's made the decisions that it thought was appropriate under the circumstances that it now faces.

I'll -- I appreciate being walked through the redline. It's just a -- it's a better deal, it's a more

commercial deal, and the debtor is going to pay the consequence of not having been able to get it the first time around, which I think that we would all acknowledge it wasn't available.

So I'm -- again, and I appreciate the committee bringing it to my attention. It's a learning experience for me, I have no doubt it will be a learning experience and on the list of those things that the U.S. Trustee looks on first-day pleadings.

But I'm going to overrule the objection. I'm going to approve the refinancing, the new DIP.

You've got your hearing date. I understand that there were a few more tweaks that needed to be made. I assume that you will circulate them to all of the parties that want to see them. And then you'll let Mr. Alonzo know once that hearing has been uploaded.

Ms. Berkovich, is that correct?

MS. BERKOVICH: Yes, Your Honor.

THE COURT: Oh, you're back on your --

MS. BERKOVICH: I'm back on my binder.

That is correct, we will submit a revised order per the process that Your Honor mentioned.

THE COURT: So let me -- and again, just I know that you probably need that today.

MS. BERKOVICH: Yes, Your Honor.

THE COURT: So I want to tell you I feel awful. I've got one more hearing, and then I see a nap in my future, somewhere other than the courthouse.

(Laughter)

THE COURT: So if you would just make sure you coordinate with Mr. Alonzo. I'll take my computer home. I'll do it from wherever I am. But you need to make sure you talk to him because I'm not going to look for it.

MS. BERKOVICH: Yes, Your Honor. And we understand the process and we will coordinate with Mr. Alonzo and --

THE COURT: Terrific.

MS. BERKOVICH: -- with -- just two quick points:

First, I want to make it clear for the record that just because we've terminated the RSA and we're -- we're not going to keep our eye off the ball here, which is to try to get this company out of Chapter 11, but we're going to try to do so with a good process and with input from all of our stakeholders. So that's our next task at hand here.

THE COURT: I totally got that. Look, it's the respect that I have for the entire room. You're all going to do exactly what you're -- what you do better than anybody else. I mean, everybody has got a role to play, everybody has got a position. And it's those clashing positions that give me confidence that the right result will come out of that, whatever that is.

And I -- you know, I took Mr. Hansen at face value. I mean, he doesn't like where he is, I got that. But I also know that, given his skill set, he'll figure out a way to maximize whatever it is he has, and I know that your team will do the same. I know that the committee is going to fight hard for those folks who are probably currently out of the money or not much in the money.

And I -- again, I've known -- I don't know Ms. Reed's colleague, but I do know Ms. Reed. She's one of the finest lawyers I've ever seen in the courtroom. You know, they're going to advocate for equity.

That's exactly what should happen and I'll make the calls based upon the record that I get. And hopefully, the result that we get at the end of the day honors the Bankruptcy Code, it recognizes the economics, both inside the company, as well as in the industry, in the nation, whatever those happen to be at the time, and the process will work. It will be transparent and people may not like the result. No one says you have to like it, you just have to be able to understand it and see through it. That's the goal.

MS. BERKOVICH: Agree, Your Honor.

And there is one last item on the agenda. We'll keep it brief. And my colleague Mr. Cain will handle that motion.

THE COURT: Perfect. Mr. Cain.

MR. CAIN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. CAIN: Jeremy Cain of Weil, Gotshal & Manges on -- proposed counsel for the debtors.

THE COURT: Yes, sir.

MR. CAIN: I'll be brief and I will not use the step stool.

THE COURT: I don't want you to be brief. I want to see you're a game. I don't know you.

(Laughter)

THE COURT: I want to see you're a game.

MR. CAIN: Your Honor, the debtors have moved for authorization to sell all of their Bitmain coupons free and clear of all encumbrances pursuant to Section 363(f) of the Bankruptcy Code. That motion is at Docket Number 346.

In support of the motion, the debtors have submitted the declaration of Mr. Russell Cann at Docket Number 393.

This motion has been unopposed and we think that it's noncontroversial for at least three reasons:

First, the debtors do not plan to use the coupons, which are only valid for a specific model of bitcoin miners from Bitmain.

Second, if no action is taken, all of these coupons will expire worthless in the next two to three months, with the vast majority expiring on March 22nd.

The third reason is that, if the motion is granted, the debtors will have an opportunity to sell these coupons on the market if they move quickly, and they've made the business judgment that it is prudent to do so.

At this time, we move to admit the declaration of Russell Cann in support of this motion, Docket Number 393. And Mr. Cann is available here today, and is available in case the Court or other parties have questions.

THE COURT: All right. Anyone have an objection to the admission of Mr. Cann's declaration found at Docket Number 393?

(No verbal response)

THE COURT: All right. Then it's admitted.

(Cann Declaration and ECF 393 received in evidence)

THE COURT: Anyone wish to cross-examine Mr. Cann? I have such an inclination to call him, but I won't.

(Laughter)

THE COURT: And I take it no one else is going to, either.

(No verbal response)

THE COURT: All right. Then, with that, I'll accept Mr. Cann's declaration. I have read the declaration at 393.

I appreciate the argument. You said exactly what you needed to say in the last sentence. It's just a practical application, it's business judgment. If we do nothing, it's

worth nothing. If we do something, then we maximize value.

MR. CAIN: Yes, Your Honor.

THE COURT: All right. Anyone else wish to be heard?

(No verbal response)

THE COURT: All right. Again, I find the requested relief just makes good practical sense. We all wish you could get more, but I understand that the market is what the market is for these things. I think it's a good decision. I'll grant the motion.

I want to make sure I got -- did we have revised form of orders or was it just the original order that was submitted with the motion?

MR. CAIN: I believe it was just the original form of order that was submitted with the motion.

THE COURT: I will get that signed and on the docket. I've got a noon, which I have -- I need to deal with. But I'll get that done early afternoon.

MR. CAIN: Thank you, Your Honor.

THE COURT: All right. Thank you.

Anything else we need to address?

MS. BERKOVICH: Nothing else, Your Honor.

THE COURT: All right.

MS. BERKOVICH: Thank you very much for your time.

THE COURT: Thank you.

Let's -- just one thing. Does the committee see things coming down the pike that we need to plan for or you're still investigative planning/talking mode? I just want to make sure you have access if you need it.

MR. MILLER: Your Honor, Brett Miller, Willkie Farr, for the committee.

Because the ad hoc group is not the DIP lender; therefore, the immediate challenge deadlines have been removed from the new order.

THE COURT: All right.

MR. MILLER: So there will be time to look at some of the things that we outlined in our initial objection. So there's nothing timely, other than getting up to speed and hopefully watching bitcoin go up to 100,000.

THE COURT: Yeah, that would be great.

And I assume that you -- everyone is working together on exchanging documents and making sure that the committee has access to those things that it needs.

MR. MILLER: Having spent the better part of 30 years working opposite Weil and members of this team, as well as Mr. Hanson and his team for a long time --

THE COURT: Sure.

MR. MILLER: -- everything has gone very smoothly, very professionally, and there's been no complaints over that.

THE COURT: Terrific. I'm here if you need me.

And again, Ms. Reed, just to reiterate, when you folks are ready, just coordinate with the major constituents, reach out to Mr. Alonzo, get your hearing date, and we'll take that up just as soon as you're ready. Okay? All right.

Then, everyone, I've got a new hearing, so I'm not going to step down. Please, as expeditiously and as quietly as you can, gather up and go, and I will see everybody soon. We'll be adjourned.

(Proceedings concluded at 1:03 p.m.)

* * * * *

I certify that the foregoing is a correct transcript to the best of my ability produced from the electronic sound recording of the proceedings in the above-entitled matter.

/S./ MARY D. HENRY

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